

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

OSCAR HOWARD

Claim No. CU-3582

Decision No. CU -6122

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on March 24, 1971.  
No oral hearing requested.

Hearing on the record held September 15, 1971.

FINAL DECISION

The Commission entered its Proposed Decision on this claim on March 24, 1971, certifying a loss to the claimant as follows:

Loss of payment for merchandise shipped	\$74,401.13
Loss of merchandise taken from an	
Express Company	3,185.13
Inventory taken	<u>25,000.00</u>
	\$102,586.26

Claim in the amount of \$16,000 for funds assertedly confiscated from his showroom was denied as it was not established; and claim for \$31,500 in connection with converting money into United States funds was denied as such loss is not within the purview of Title V of the Act.

Claimant has filed objections and contends that an affidavit of one Eli Gonzalez upon which the Commission relied in finding that inventory was lost in an amount of \$25,000, in fact was intended to refer to the item of \$16,000 for funds assertedly confiscated in different ways. It is noted that if this be so, as apparently it is, Mr. Gonzalez' opinion of the loss far exceeds claimant's opinion of that item. Claimant contends that in buying funds in the open market he was defrauded with forged and fraudulent checks, cashier's checks, counterfeit money orders and currency to the extent of \$16,000.

The record does not establish that such loss occurred as a direct result of nationalization, expropriation, intervention or other taking or special measures on the part of the Government of Cuba. The Commission has examined the record and claimant's contentions in this matter and affirms its holding that claimant has failed to meet the burden of proof with respect to confiscation of sums totalling \$16,000.

In connection with the item of \$31,500 for loss in connection with the cost of exchanging currency, claimant contends that he was paying up to 100% premium for United States funds, and that his claim would be for an additional \$100,000 if he had not decided to buy United States funds in the open market. He states that he was denied his rights to remit funds through the banks and had no choice but to use the only avenue at his disposal. He has supplied a list which he states shows a "shipment" of United States funds. The Commission has considered the contentions, but is constrained to affirm its holding that losses sustained in exchange of currency are not within the purview of Title V of the Act.

With regard to the merchandise inventory which had been allowed in the amount of \$25,000, claimant has now submitted the affidavit of one Santiago Garcia who avers that for many years, claimant used space in Mr. Garcia's stockroom and plant for storing cartons of his goods to be distributed to claimant's customers. The handling and storing was mostly done by Mr. Gonzalez, a former employee of claimant. Mr. Garcia was compensated for the use of the space. Claimant had similar arrangements with several other firms in the district. During June, 1959 claimant caused a great many cartons to be brought into Mr. Garcia's plant. He knows that there were over sixty cartons of knitwear in his factory rooms which were taken by Cuban agents; and further he avers that this stock of merchandise exceeded \$42,000 in value. In connection with this affidavit, the Commission has re-examined the record, including the detailed listing by claimant of this property. The Commission now finds that the inventory taken from claimant on July 4, 1959 in fact had a value of \$42,000, rather than the \$25,000 initially allowed.


Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the Proposed Decision as amended herein is affirmed in all other respects.

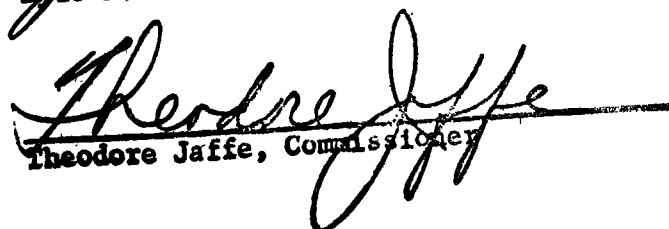
CERTIFICATION OF LOSS

The Commission certifies that OSCAR HOWARD suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Nineteen Thousand Five Hundred Eighty-Six Dollars and Twenty-Six Cents (\$119,586.26) with interest at 6% per annum from the respective dates of loss.

Dated at Washington, D. C.,  
and entered as the Final  
Decision of the Commission

**SEP 15 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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6122

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by OSCAR HOWARD for \$167,085.00 based upon the asserted loss of payment for merchandise shipped to Cuba, the loss of personalty including cash, and on the loss due to the cost of securing exchange in Cuba to pay bills in the United States. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant describes his loss as follows:

1. Amount due for merchandise shipped	\$ 77,585.00
2. Merchandise in stock	42,000.00
3. Cash	16,000.00
4. Cost of securing exchange to remit funds	<u>31,500.00</u>
	\$167,085.00

Merchandise Shipped

The record contains copies of invoices, ledger extracts and other documents which reflect the sale by claimant of certain goods to customers in Cuba. Claimant states that he has not received the funds.

The following is a listing of items documented by claimant including amounts and dates due:

<u>Consignee</u>	<u>Date Due</u>	<u>Amount</u>
Almacenes Saxony, S.A.	June 18, 1958	\$ 816.66
Almacenes Inclan, S.A.	October 29, 1959	2,707.76
Alvarez & Company	August 6, 1959	1,752.50
A. Behar & M. Rivero	June 13, 1959	2,900.00
Broadway Store	September 12, 1959	3,350.63
Agustin Canamero	June 13, 1959	1,124.62
Continental Express Co.	October 11, 1959	76.25
Casa Prado	August 1, 1959	2,025.03
Convey Express Company	February 28, 1960	524.36
Domínguez & Company	August 30, 1959	2,047.35
Espina & Company	June 5, 1960	6,793.50
La Elegante, S.A.	June 8, 1959	6,103.60
Ramon Fernandez Espina	June 22, 1958	1,296.93
A. García & Canella	August 7, 1959	996.00
Emanuel García	December 2, 1959	1,007.00
Galerías Kay	June 30, 1959	1,935.30
Copel Gherscovici	May 13, 1959	1,200.00
E. Gonzalez & Company	February 17, 1960	2,506.85
Santiago García	July 9, 1959	9,812.10
Sara Gonzalez	July 28, 1959	362.50
Herran Alonso & Co.	August 6, 1959	2,072.50
Hilmar S.A.	June 11, 1958	698.00
Hotel Plaza	December 30, 1959	543.42
Alex Kasper	December 16, 1960	250.00
Lopez & Rio, S.A.	March 9, 1960	720.00
Luis Marcelin	June 26, 1959	3,153.27

<u>Consignee</u>	<u>Date Due</u>	<u>Amount</u>
Meana & Hijos	August 6, 1959	\$ 1,987.06
La Opera, S.A.	February 3, 1960	5,390.84
Ernesto Rodriguez	August 9, 1959	403.25
Solomon Rutzky	August 31, 1958	803.75
Sanchez Mola & Company	June 9, 1959	3,786.80
Gerson Smolarcik	January 7, 1960	2,733.33
Tejidos Unica, S.A.	August 2, 1959	96.00
Hirsh Shapiro	May 26, 1958	2,323.97
Generoso Valle	June 22, 1960	<u>100.00</u>
	Total	\$74,401.13

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the customers in Cuba, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$74,401.13 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by customers in Cuba, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

Merchandise

A portion of this claim in the amount of \$3,185.13 is based on certain merchandise which it appears was taken after delivery to the Continental Express Company on September 8, 1959, and for claimant's inventory of sportswear and knitwear in the asserted amount of \$42,000.00 which he states was taken by the Government of Cuba.

Claimant has not been able to document the loss of merchandise delivered to the Continental Express Company and has submitted an affidavit from a former employee who states that claimant's losses due to confiscations, theft and "blackmailed" exceeded \$25,000.00. In addition claimant has submitted a clipping from a Havana newspaper which he states was dated about July, 1959 which refers to claimant by name and reports that the Textile and Needle Syndicate denounces him as selling his merchandise at "dumping prices" and solicits the confiscation of that merchandise whose prices are out of line. Claimant states that he left Cuba on July 4, 1959.

Since the record establishes that claimant was in business in Cuba and contains supporting evidence for claims made for goods sold in Cuba, the Commission finds that agents of the Cuban Government took his merchandise in the amount of \$3,185.13 which had been delivered to the Continental Express Company, that this loss occurred on September 8, 1959, and that he similarly lost other merchandise in stock in the amount of \$25,000.00 as of July 4, 1959.

Cash

Claimant asserts that he kept funds under lock in his show rooms at the Hotel Plaza for remittance to New York and that the total funds confiscated was \$16,000.00.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimant has failed to meet the burden of proof with respect to this portion of his claim and accordingly it is denied.

Cost of Securing Exchange of Funds

Claimant asserts that it was necessary in his business to convert over \$200,000.00 into United States funds in the open market in order to make payment to United States firms for goods purchased by him. He states that the exchange costs and other expenses connected with this conversion amounted to \$31,500.00.

The Commission holds that such losses or expenses are not within the purview of Title V of the Act and therefore this portion of the claim is also denied.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
July 4, 1959	\$ 25,000.00
September 8, 1959	3,185.13
September 29, 1959	51,047.82
October 11, 1959	76.25
October 29, 1959	2,707.76
December 2, 1959	1,007.00
December 30, 1959	543.42
January 7, 1960	2,733.33
February 3, 1960	5,390.84
February 17, 1960	2,506.85
February 28, 1960	524.36
March 9, 1960	720.00
June 5, 1960	6,793.50
June 22, 1960	100.00
December 16, 1960	250.00
	<u>\$102,586.26</u>

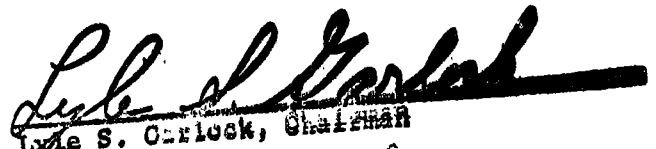


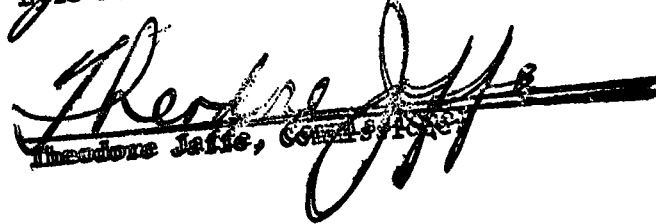
CERTIFICATION OF LOSS

The Commission certifies that OSCAR HOWARD suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Two Thousand Five Hundred Eighty-Six Dollars and Twenty-Six Cents (\$102,586.26) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**MAR 24 1971**

  
Lyle S. Carlock, Chairman

  
Theodore Jaffe, Counsel

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)